

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KENNY CALIHAN,

No. C 13-5623 JSW (PR)

Petitioner,

**ORDER OF DISMISSAL;
GRANTING LEAVE TO
PROCEED IN FORMA PAUPERIS**

v.

TAB BENNETT,

Respondent.

(Docket No. 2)

This case was opened based on an application to proceed in forma pauperis filed by Petitioner, a California prisoner, on December 5, 2013. On the day the letter was received, the Clerk notified Petitioner that he must file a petition within twenty-eight days or the case would be dismissed. Along with the notice, Petitioner was mailed the Court's form habeas petition, instructions for completing it, and a stamped envelope with the Court's address printed on it. Petitioner filed a brief letter requesting "to amend the complaint" and "a copy of the original action filed in this action." Petitioner's prior case was transferred to the Eastern District of California for venue considerations. *See Calihan v. Knipp*, Case No. C 12-3180 JSW (PR) (N.D. Cal.)). Petitioner should request copies of his prior case from that court.

The deadline in this case has passed and no habeas petition has been filed. Without a petition or other pleading, including such basic information as where Plaintiff was convicted, the charges he faced and was convicted of, the state court remedies he has exhausted, and his grounds for relief, the Court has no case or controversy to

1 adjudicate. *See Valley Forge Christian College v. Americans United for Separation of*
2 *Church and State, Inc.*, 454 U.S. 464, 471 (1982). Accordingly, this case is
3 DISMISSED without prejudice.

4 The application to proceed in forma pauperis (dkt. 2) is GRANTED.

5 Rule 11(a) of the Rules Governing Section 2254 Cases now requires a district
6 court to rule on whether a Petitioner is entitled to a certificate of appealability in the
7 same order in which the petition is decided. Petitioner has failed to make a substantial
8 showing that a reasonable jurist would find this Court's dismissal of this action debatable
9 or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Consequently, no certificate of
10 appealability is warranted in this case.

11 IT IS SO ORDERED.

12 DATED: 2/6/14


JEFFREY S. WHITE
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

KENNY CALIHAN,
Plaintiff,

v.

TAB BENNETT et al,
Defendant.

Case Number: CV13-05623 JSW

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on February 6, 2014, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Kenny Calihan
Corcoran State Prison
4001 Kings Avenue
Corcoran, CA 93212

Dated: February 6, 2014

Richard W. Wieking, Clerk
By: Lisa R Clark, Deputy Clerk